

Appl No. 10/057,182
Amdt. Dated Nov.19, 2004
Reply to Final Rejection Dated Sept. 21, 2004
Attorney Docket No. 8854
Customer No. 27752

This listing of claims will replace all prior versions and listings of claims in the application:

Listing of Claims:

1. (Original) Antiperspirant compositions comprising:
 - (a) from about 0.1% to about 30% by weight of an antiperspirant active;
 - (b) from about 0.05% to about 0.95% by weight of petrolatum;
 - (c) from about 10% to about 99% by weight of a liquid carrier; and
 - (d) from about 0.1% to about 30% by weight of a suspending agent.
2. (Original) An antiperspirant composition according to Claim 1, wherein petrolatum concentration ranges from about 0.3% to about 0.8% by weight of the composition.
3. (Original) An antiperspirant composition according to Claim 1, wherein the petrolatum comprises White Petrolatum U.S.P.
4. (Original) An antiperspirant composition according to Claim 3, wherein the petrolatum has a Saybolt Viscosity of at least about 55.
5. (Original) An antiperspirant composition according to Claim 1 wherein the composition is anhydrous and contains less than 5% by weight of free or added water.
6. (Original) An antiperspirant composition according to Claim 1 wherein the antiperspirant active is selected from the group consisting of zirconium-containing active, aluminum-containing active, and combinations thereof.
7. (Original) An antiperspirant composition according to Claim 4 wherein the antiperspirant active is selected from the group consisting of aluminum chlorohydrate, aluminum dichlorohydrate, aluminum sesquichlorohydrate, aluminum chlorohydrate propylene glycol complex, aluminum dichlorohydrate propylene glycol complex, aluminum sesquichlorohydrate propylene glycol complex, aluminum chlorohydrate polyethylene glycol complex, aluminum dichlorohydrate polyethylene glycol complex, aluminum sesquichlorohydrate polyethylene glycol complex, aluminum zirconium trichlorohydrate, aluminum zirconium tetrachlorohydrate, aluminum zirconium pentachlorohydrate, aluminum zirconium octachlorohydrate, aluminum zirconium trichlorohydrate glycine complex, aluminum zirconium tetrachlorohydrate glycine complex, aluminum zirconium pentachlorohydrate glycine complex, aluminum zirconium octachlorohydrate glycine complex, aluminum chloride, aluminum sulfate buffered, and combinations thereof.

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8. (Original) An antiperspirant composition according to Claim 5, wherein the antiperspirant active comprises a zirconium-containing active and an aluminum-containing active, at a combined concentration of from about 5% to about 30% by weight of the composition.
9. (Original) An antiperspirant composition according to Claim 6 wherein the carrier comprises a volatile cyclomethicone that represents from about 5% to about 80% by weight of the composition.
10. (Original) An antiperspirant composition according to Claim 7, wherein the carrier further comprises a non-volatile silicone liquid that represents from about 1% to about 35% by weight of the composition.
11. (Original) An antiperspirant composition according to Claim 1, wherein the antiperspirant active is in the form of solid particulates.
12. (Original) An antiperspirant composition according to Claim 1, wherein the composition further comprises from about 3% to about 35% by weight of a suspending agent.
13. (Original) An antiperspirant composition according to Claim 10, wherein the composition is in the form of a solid stick.
14. (Original) An antiperspirant composition according to Claim 10, wherein the composition is in the form of a soft solid.
15. (Original) An antiperspirant composition according to Claim 10, wherein the suspending agent comprises hydrogenated castor oil.
16. (Original) An antiperspirant composition according to Claim 1, wherein the composition further comprises from about 0.1% to about 10% by weight of PEG-8 distearate.
17. (Original) An antiperspirant composition according to Claim 1, wherein the composition further comprises from about 0.1% to about 5% by weight of silica.
18. (Original) An antiperspirant composition according to Claim 1, wherein the composition further comprises from about 0.1% to about 10% by weight of C18-36 triglycerides.

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19. (Original) Antiperspirant compositions comprising:
 - (a) from about 0.1% to about 30% by weight of an antiperspirant active;
 - (b) from about 1.0% to about 3% by weight of petrolatum having a Saybolt Viscosity of at least about 55;
 - (c) from about 10% to about 99% by weight of a liquid carrier; and
 - (d) from about 0.1% to about 30% by weight of a suspending agent.
20. (Original) An antiperspirant composition according to Claim 19, wherein the suspending agent comprises hydrogenated castor oil.
21. (Original) An antiperspirant composition according to Claim 19, wherein the composition further comprises from about 0.1% to about 10% by weight of PEG-8 distearate.
22. (Original) An antiperspirant composition according to Claim 19, wherein the composition further comprises from about 0.1% to about 5% by weight of silica.
23. (Original) An antiperspirant composition according to Claim 19, wherein the composition further comprises from about 0.1% to about 10% by weight of C18-36 triglycerides.
24. (Original) A method of improving antiperspirant efficacy, said method comprising the topical underarm application of the composition of Claim 1.
25. (Original) A method of improving antiperspirant wash-off, said method comprising the topical underarm application of the composition of Claim 1.
26. (Original) A method of inhibiting underarm perspiration wetness and odor, said method comprising the topical underarm application of the composition of Claim 1.
27. CANCELED
28. CANCELED

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Response to the Office Action

Rejection under 35 U.S.C. 112, first paragraph

Claims 27 and 28, rejected under 35 USC 112, first paragraph, are canceled by the present amendment. The 35 USC 112, first paragraph, rejection is therefore moot.

Rejection under 35 U.S.C. 103(a)

Claims 1-23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al., (US 5,176,903) in further view of Berndt (US 5,626,856) and Putman et al., (US 5,902,571).

The Examiner relies on Goldberg to assert that the claimed range 0.05%-0.95% of petrolatum is obvious in view of the Goldberg's disclosed range 10%-30% of waxes. The undersigned respectfully disagrees.

First of all, while Goldberg is directed to an antiperspirant/deodorant composition, Goldberg is concerned with microcapsules encapsulating a composition. Goldberg teaches an antiperspirant composition containing a cosmetically effective amount of microcapsules which encapsulate a composition comprising fragrance oil and a diester. While Goldberg utilizes a wax base and other "nonessential constituents" such as suspending agents, petrolatum is included in a big laundry list of other waxes that may (or may not) be used in a composition. The possibility that Goldberg may (or may not) use petrolatum (among other waxes) in the compositions that comprise 12%-30% of waxes is not a teaching to use petrolatum in a specific claimed range of 0.05%-0.95%. Any consideration of Goldberg's disclosure as a whole, mandated by *MPEP 2141*, neither provides any motivation to use nor indicates any desirability of using petrolatum in the claimed range. The Examiner is respectfully reminded about impermissibility of a hindsight vision afforded by the claimed invention. *MPEP 2141*.

Nor does Goldberg recognize petrolatum as a result-effective variable, *MPEP 2144.05(B)*. Goldberg simply attaches no significance to the presence or absence of petrolatum in its composition. That is why Goldberg states that petrolatum – among other seventeen waxes – may be used as subordinate wax. Based on Goldberg, one skilled in the art may reasonably decide not to include petrolatum in the composition at all.

Goldberg does not recognize that the claimed range of petrolatum can provide the consumer benefit of antiperspirant efficacy and wash-off benefits. *See, Specification, at 1:27-2:11*. Petrolatum is generally known for inhibiting antiperspirant efficacy and wash-off benefits. Thus, higher amounts of petrolatum may adversely affect the consumer benefits of the product of the present invention. On the other hand, selectively low concentrations of petrolatum in the antiperspirant compositions of the present invention allow for both antiperspirant efficacy and

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wash-off benefits. None of this is recognized by Goldberg. Therefore, one skilled in the art, based on Goldberg's disclosure, would not be motivated to use petrolatum in the specific claimed range.

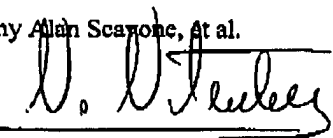
The Office Action cites *In re Woodruff* for the proposition that where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a prima facie case of obviousness exists. *In re Woodruff*, 919 F.2d 1575, 15 USPQ2d 1934 (Fed. Cir. 1990). In *In re Woodruff* the court correctly considered the claimed ranges of more than 5% of one component, carbon monoxide, to overlap with the prior art teaching of about 1-5% of the same component. The Examiner fails to recognize that in the present case, Goldberg does not teach any range of petrolatum. Goldberg's disclosure of the range 12%-30% of waxes neither teaches nor suggests the claimed range 0.05%-0.95% of petrolatum. Therefore, the reliance on the *In re Woodruff* is misplaced.

The undersigned respectfully requests the Examiner to reconsider and allow the claims, as amended.

Respectfully submitted,

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